

(b) Tax Returns and Audits.

(i) The Company has prepared and timely filed all material required federal, state, local and foreign returns, estimates, information statements and reports ("**Returns**") relating to any and all Taxes concerning or attributable to the Company or its operations and such Returns are in all material respects true and correct and completed in accordance with applicable law.

(ii) The Company has timely paid all material Taxes it is required to pay and timely paid or withheld with respect to its employees and other third parties (and timely paid over any withheld amounts to the appropriate Taxing authority) all material federal and state income taxes, Federal Insurance Contribution Act, Federal Unemployment Tax Act and other Taxes required to be withheld or paid.

(iii) The Company has not been delinquent in the payment of any Tax, nor is there any material Tax deficiency outstanding, assessed or proposed against the Company, nor has the Company executed any outstanding waiver of any statute of limitations on or extension of the period for the assessment or collection of any material Tax.

(iv) No audit or other examination of any Return of the Company is presently in progress, nor has the Company been notified of any request for such an audit or other examination. No adjustment relating to any Return filed by the Company has been proposed in writing by any Tax authority to the Company. No claim has ever been made in writing by an authority in a jurisdiction where the Company does not file Returns that it is or may be subject to taxation by that jurisdiction.

(v) The Company had no liabilities for unpaid material Taxes as of the date of the balance sheet included in the Financials which have not been accrued or reserved on the balance sheet included in the Financials, whether asserted or unasserted, contingent or otherwise, and the Company has not incurred any liability for material Taxes since the date of the balance sheet included in the Financials other than in the ordinary course of business.

(vi) The Company has made available to Buyer or its legal counsel or accountants copies of all Returns for the Company filed for all periods since its inception.

(vii) There are (and immediately following the Effective Time there will be) no Liens on the assets of the Company relating to or attributable to Taxes other than Liens for Taxes not yet due and payable or which are being contested in good faith and for which adequate reserves have been established.

(viii) The Company is not, and has not been at any time, a "United States Real Property Holding Corporation" within the meaning of Section 897(c)(2) of the Code.

(ix) The Company has (a) never been a member of an affiliated group (within the meaning of Code §1504(a)) filing a consolidated federal income Return (other than a

group the common parent of which was Company), (b) never been a party to any Tax sharing, indemnification or allocation agreement, nor does the Company owe any amount under any such agreement and (c) no liability for the Taxes of any person under Treas. Reg. § 1.1502-6 (or any similar provision of state, local or foreign law, and including any arrangement for group relief within a jurisdiction or similar arrangement), as a transferee or successor, by contract, or otherwise.

(x) The Company has not constituted either a “distributing corporation” or a “controlled corporation” in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code.

(xi) The Company has not engaged in a “reportable transaction,” as set forth in Treas. Reg. § 1.6011-4(b), or any transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a “listed transaction,” as set forth in Treas. Reg. § 1.6011-4(b)(2).

(xii) The Company has not made an election to be taxes as an “S corporation” under Subchapter S of the Code or any comparable provision of local, state or foreign law.

(xiii) The Company uses the accrual method of accounting for tax purposes.

(xiv) The Company will not be required to include any income or gain or exclude any deduction or loss from Taxable income as a result of any change in method of accounting under Section 481(c) of the Code.

(xv) None of the Company’s assets is treated as “tax-exempt use property,” within the meaning of Section 168(h) of the Code.

(c) Executive Compensation Tax. There is no contract, agreement, plan or arrangement to which the Company is a party, including, without limitation, the provisions of this Agreement, covering any employee or former employee of the Company or other person, which, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to Sections 280G, 404 or 162(m) of the Code or any similar provision of applicable law or that would give rise to a penalty under Section 409A of the Code.

2.9 Assets Other than Real Property. The Company has good and valid title to, or a valid leasehold interest in, as applicable, all of its assets reflected in the Financials or acquired after the date thereof, free and clear of all Liens except statutory liens for the payment of current taxes that are not yet delinquent and which do not affect the properties or assets of the Company in any material respect. All tangible personal property owned by the Company has been maintained, in all material respects, in good operating condition and repair, ordinary wear and tear excepted. All assets leased by the Company are in the condition required by the terms of the lease applicable thereto during the term of such lease and upon the expiration thereof. Such assets, together with the assets listed on Schedule 2.10 and Schedule 2.11, constitute all of the material properties, interests,

assets and rights held for use or used in connection with the business and operations of the Company and constitute all those necessary to continue to operate the business of the Company consistent with current and historical practice. Except as indicated in the preceding sentence, this Section 2.9 does not relate to (i) real property or (ii) intellectual property of the Company; such items are covered under Section 2.10 and Section 2.11, respectively.

2.10 Real Property. The Company does not own and has never owned any real property. Schedule 2.10 sets forth a complete list of all real property and interests in real property leased by the Company or which the Company otherwise occupies or has a right to occupy under a written or unwritten agreement (“**Leased Real Property**”). The Company has good and valid leasehold interest in all Leased Real Property free and clear of all Liens. Except as listed on Schedule 2.10, the Company has not leased any real property at any time other than the Leased Real Property. With respect to the leases or other occupancy agreements affecting the Leased Real Property (each, a “**Lease**”), there exists no default by the Company or any event or circumstance which upon notice or the passage of time, or both, would give rise to any default by the Company, nor, to the knowledge of the Company, is there any such default or events or circumstances of default by any lessor or subtenant under such Lease. Except as set forth on Schedule 2.10, to the Company’s knowledge no party other than the Company has the right to occupy any of the Leased Real Property. The Company is not required to incur any material cost or expense for any restoration or surrender obligations upon the expiration or earlier termination of any Lease.

2.11 Intellectual Property and Related Matters.

(a) **Definitions.** For all purposes of this Agreement, the following terms shall have the following respective meanings:

“**Intellectual Property**” shall mean any or all of the following (i) works of authorship including, without limitation, computer programs, source code, and executable code, whether embodied in software, firmware or otherwise, documentation, designs, files, records, data and mask works, (ii) inventions (whether or not patentable), improvements, and technology, (iii) proprietary and confidential information, trade secrets and know how, (iv) databases, data compilations and collections and technical data, (v) logos, trade names, trade dress, trademarks and service marks, (vi) domain names, web addresses and sites, (vii) tools, methods and processes, and (viii) any and all instantiations of the foregoing in any form and embodied in any media.

“**Intellectual Property Rights**” shall mean worldwide common law and statutory rights associated with (i) patents and patent applications, (ii) copyrights, copyright registrations and copyright applications, “moral” rights and mask work rights, (iii) the protection of trade and industrial secrets and confidential information, (iv) other proprietary rights relating to intangible intellectual property, (v) trademarks, trade names and service marks, (vi) analogous rights to those set forth above, and (vii) divisions, continuations, renewals, reissues and extensions of the foregoing (as applicable).

“**Company Intellectual Property**” shall mean any Intellectual Property and Intellectual Property Rights that are owned by or exclusively licensed to the Company.

“Registered Intellectual Property” shall mean Intellectual Property and Intellectual Property Rights that have been registered, filed, certified or otherwise perfected or recorded with any state, government or other public legal authority.

(b) Schedule 2.11(b) (i) lists all Registered Intellectual Property owned by, or filed in the name of, the Company (the **“Company Registered Intellectual Property”**) and (ii) lists any proceedings or actions before any court or tribunal (including the United States Patent and Trademark Office (the **“PTO”**) or equivalent authority anywhere in the world) related to any of the Company Registered Intellectual Property.

(c) Company owns and has good and marketable title to each item of Company Intellectual Property, including all Company Registered Intellectual Property listed on Schedule 2.11(b), free and clear of any Liens or other encumbrances. The Company is the exclusive owner or exclusive licensee of all Company Intellectual Property.

(d) To the extent that any Intellectual Property has been developed or created independently or jointly by any person other than the Company for the Company, the Company has a written agreement with such person with respect thereto, and the Company thereby has obtained ownership of, and is the exclusive owner of, all such Intellectual Property therein and associated Intellectual Property Rights by operation of law or by valid assignment.

(e) The Company has not transferred ownership of, or granted any exclusive license of or exclusive right to use, or authorized the retention of any exclusive rights to use or joint ownership of, any Intellectual Property or Intellectual Property Rights that is or was Company Intellectual Property, to any other person.

(f) The Company Intellectual Property as it exists as of the date hereof constitutes all the Intellectual Property and Intellectual Property Rights used in the conduct of the business of the Company as it currently is conducted, including, without limitation, the design, development, manufacture, use, import and sale of products, technology and services (including products, technology or services currently under development). To the knowledge of the Company, the Company Intellectual Property as it exists as of the date hereof and Intellectual Property and Intellectual Property Rights developed by or for the Company after the date hereof constitutes all the Intellectual Property and Intellectual Property Rights necessary to the conduct of the business of the Company as planned to be conducted according to the Product Map, including, without limitation, the design, development, manufacture, use, import and sale of products, technology and services (including products, technology or services currently under development according to the Product Map).

(g) Other than (i) “shrink-wrap” and similar widely available binary code and commercial end-user licenses, but not including Open Source Materials, and (ii) other non-exclusive licenses and related agreements with respect thereto of the Company’s products to end-users pursuant to written agreements that have been entered into in the ordinary course of business that do not materially differ in substance from the Company’s standard form(s) of end-user license including attachments (which is or are included on Schedule 2.11(g)), Schedule 2.11(g) lists all (x) contracts,

licenses and agreements to which the Company is a party with respect to any Intellectual Property and Intellectual Property Rights and (y) contracts, licenses and agreements between the Company and any other person wherein or whereby the Company has agreed to, or assumed, any obligation or duty to warrant, indemnify, reimburse, hold harmless, guaranty or otherwise assume or incur any obligation or liability or provide a right of rescission with respect to the infringement or misappropriation by the Company or such other person of the Intellectual Property Rights of any person other than the Company. No third party who has licensed Intellectual Property or Intellectual Property Rights to the Company has ownership rights or license rights to improvements made by the Company in such Intellectual Property which has been licensed to the Company.

(h) The operation of the business of the Company as it currently is conducted, including but not limited to the design, development, use, import, manufacture and sale of the products, technology or services (including products, technology or services currently under development) of the Company, does not infringe or misappropriate the Intellectual Property Rights of any person, violate the rights of any person (including rights to privacy or publicity), or constitute unfair competition or trade practices under the laws of any jurisdiction. To the knowledge of the Company, the operation of the business of the Company as it currently is contemplated to be conducted according to the Product Map, including but not limited to the design, development, use, import, manufacture and sale of the products, technology or services (including products, technology or services currently under development) of the Company according to the Product Map, will not infringe or misappropriate the Intellectual Property Rights of any person, violate the rights of any person (including rights to privacy or publicity), or constitute unfair competition or trade practices under the laws of any jurisdiction. The Company has not received any notice from any person claiming that such operation or any act, product, technology or service (including products, technology or services currently under development) of the Company infringes or misappropriates the Intellectual Property Rights of any person or constitutes unfair competition or trade practices under the laws of any jurisdiction (nor, to the knowledge of the Company, is there a colorable basis therefor).

(i) To the knowledge of the Company, each item of Company Registered Intellectual Property is valid and subsisting, and all necessary registration, maintenance and renewal fees in connection with such Company Registered Intellectual Property have been paid and all necessary documents and certificates in connection with such Company Registered Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining such Company Registered Intellectual Property. There are no actions that must be taken by the Company within sixty (60) days of the Closing Date, including the payment of any registration, maintenance or renewal fees or the filing of any documents, applications or certificates for the purposes of maintaining, perfecting or preserving or renewing any Company Registered Intellectual Property. In each case in which the Company has acquired any Intellectual Property Rights from any person, the Company has obtained a valid and enforceable assignment sufficient to irrevocably transfer all rights in such Intellectual Property and the associated Intellectual Property Rights (including the right to seek past and future damages with respect thereto) to the Company and, to the maximum extent provided for by, and in accordance with, applicable laws and regulations, the Company has recorded

each such assignment of Registered Intellectual Property to the Company with the relevant governmental authorities, including the PTO, the U.S. Copyright Office, or their respective equivalents in any relevant foreign jurisdiction, as the case may be.

(j) There are no contracts, licenses or agreements between the Company and any other person with respect to Company Intellectual Property under which there is any dispute Known to the Company regarding the scope of such agreement, or performance under such agreement including with respect to any payments to be made or received by the Company thereunder.

(k) Excluding effects resulting solely from any agreements between Buyer and any third parties to which the Company is not a party, neither this Agreement nor the transactions contemplated by this Agreement will result in: (i) Buyer or the Company granting to any third party any right to or with respect to any Intellectual Property owned by, or licensed to, any of them, (ii) Buyer or the Company, being bound by, or subject to, any non-compete or other material restriction on the operation or scope of their respective businesses, or (iii) Buyer or the Company being obligated to pay any royalties or other material amounts to any third party in excess of those payable by any of them, respectively, in the absence of this Agreement or the transactions contemplated hereby.

(l) Company does not have any currently pending claim against any third party for infringing or misappropriating any Company Intellectual Property, and to the knowledge of the Company, no person is infringing or misappropriating any Company Intellectual Property.

(m) The Company has taken all reasonable steps under the circumstances to protect the Company's confidential information and trade secrets of the Company or provided by any other person to the Company. Without limiting the foregoing, the Company has, and enforces, a policy requiring each employee, consultant, and contractor to execute proprietary information, confidentiality and assignment agreements substantially in the Company's standard forms, and all current and former employees, consultants and contractors of the Company have executed such an agreement in substantially the Company's standard form.

(n) No Company Intellectual Property is subject to any proceeding or outstanding decree, order, judgment or settlement agreement or stipulation that restricts in any manner the use, transfer or licensing thereof by the Company or may affect the validity, use or enforceability of such Company Intellectual Property.

(o) To the knowledge of the Company, no (i) product, technology, service or publication of the Company, solely in the forms existing prior to the Closing, (ii) material published or distributed by the Company prior to the Closing, or (iii) conduct or statement of the Company made prior to the Closing, constitutes obscene material, a defamatory statement or material or false advertising, or otherwise violates any law or regulation.

(p) No government funding, facilities or resources of a university, college, other educational institution or research center or funding from third parties was used in the development of the Company Intellectual Property and no governmental entity, university, college, other

educational institution or research center has any claim or right in or to the Company Intellectual Property.

(q) The Company has no knowledge of any facts or circumstances that would render any Company Registered Intellectual Property invalid or unenforceable.

(r) The Company has not (a) incorporated any software or other material that is distributed as “free software,” “open source software” or under a similar licensing or distribution model (“**Open Source Materials**”) into, or combined Open Source Materials with, the Company Intellectual Property; (b) distributed Open Source Materials in conjunction with any Company Intellectual Property; or (c) used Open Source Materials that create, or purport to create, obligations for Company with respect to Company Intellectual Property or grant, or purport to grant, to any third party, any rights or immunities under Company Intellectual Property.

(s) For purposes of this Section 2.11:

“**Company Sites**” means the following Company site on the World Wide Web: <http://www.android.com>.

“**Privacy Statements**” means, collectively, any and all of the Company’s privacy policies published on the Company Sites or otherwise made available by Company regarding the collection, retention, use and distribution of the personal information of individuals, including, without limitation, from visitors of any of the Company Sites (“**Individuals**”).

(i) The Company: (i) complies in all material respects with the Privacy Statements as applicable to any given set of personal information collected by the Company from Individuals; (ii) complies in all material respects with all applicable United States privacy laws and regulations regarding the collection, retention, use and disclosure of personal information; and (iii) takes reasonable measures to protect and maintain the confidential nature of the personal information provided to the Company by Individuals, in accordance with the terms of the applicable Privacy Statements. All versions of the Privacy Statements are substantially in the form attached hereto in Schedule 2.11(s).

(ii) No claims or controversies have arisen regarding the Privacy Statements or the implementation thereof.

2.12 Material Contracts. Schedule 2.12 sets forth all contracts, agreements and instruments, including term sheets and letters of intent regarding the same, whether written or oral (each, a “**Contract**”), to which the Company is a party or by which it is bound that (a) involve or relate to obligations of, or payments to, the Company in excess of \$25,000, (b) license any patent, copyright, trade secret or other proprietary right, (c) relate to the employment or compensation of any director, officer or stockholder of the Company or any Affiliate of such Person, (d) relate to the employment or compensation of any employee, consultant, independent contractor or other agent of the Company, or, to the knowledge of the Company, any Affiliate of such Person, receiving total compensation in excess of \$20,000 in any given year, (e) relate to the sale or other disposition of any

material assets, properties or rights (other than the sale of inventory) of the Company, (f) restrict the Company's ability to do business in any geographic area or in any particular manner or grant to any Person exclusive or similar rights in any line of business or in any geographic area, provisions restricting or affecting the development, manufacture or distribution of the Company's products or services; (g) restrict the Company's ability to solicit employees of another Person or restrict another Person's ability to solicit the Company's employees, (h) include any stockholder or Affiliate of any stockholder as a party, (i) contain any warranty by the Company to any other Person with respect to any product or service offered by the Company, (j) contain provisions providing for indemnification by the Company with respect to infringements of Intellectual Property and other rights (other than indemnification obligations arising from purchase or sale agreements entered into in the ordinary course of business), or (k) are otherwise material to the business, results of operations or financial condition or prospects of the Company, or entered into other than in the ordinary course of business (collectively, the "**Material Contracts**"). All of the Material Contracts are valid, binding and in full force and effect in all material respects, subject to laws of general application relating to bankruptcy, insolvency, moratorium or other similar laws affecting or relating to creditors' rights generally and rules of law and equity governing specific performance, injunctive relief and other equitable remedies, and there is no default, or any event which upon notice or the passage of time, or both, would give rise to any material default, in the performance of the Company nor, to the Company's knowledge, in the performance of any other party to any such Material Contracts. The Company has not violated and is not reasonably likely to violate with its current business practices, any governmental restrictions or regulations covering any of the Company's Material Contracts, including but not limited to export control regulations and other restrictions or regulations promulgated by the National Security Agency or the United States Department of Commerce. Except as set forth on Schedule 2.12, all Material Contracts are valid, binding and in full force and effect as to the Company.

2.13 Litigation. There is no action, suit, proceeding, or investigation pending or, to the Company's knowledge, currently threatened against the Company that questions the validity of, or the Company's right to enter into, this Agreement or any of the other agreements contemplated hereby, or to consummate the transactions contemplated hereby or thereby, or that would reasonably be expected to result, either individually or in the aggregate, in a Company Material Adverse Effect, or in any change in the current equity ownership of the Company, nor, to the Company's knowledge, is there a reasonable basis for any such action, suit, proceeding, or investigation. The foregoing includes, without limitation, any action, suit, proceeding or investigation pending or, to the Company's knowledge, currently threatened involving the prior employment of any of the Company's employees, their use in connection with the Company's business of any information or techniques allegedly proprietary to any of their former employers, their obligations under any agreements with prior employers or negotiations by the Company with potential investors in the Company or its business. The Company is not, to its knowledge, a party to or named in or subject to any order, writ, injunction, judgment, or decree of any court, government agency or instrumentality. There is no action, suit, proceeding or investigation by the Company currently pending nor does the Company intend to initiate any action, suit, proceeding or investigation.